IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 22216 of 2007(T)

PETITIONER:

SURYA ROCK PRODUCTS, NEELEESWARAM P.O.,
ANKAMALY, ERNAKULAM DISTRICT, REPRESENTED BY
MANAGING PARTNER P.M.ANTONY.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:

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1. COMMERCIAL TAX OFFICER, ANGAMALY.

2. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.22216 of 2007

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Dated this the 19th day of July, 2007.

JUDGMENT

The petitioner, a stone crushing unit was granted permission to pay tax at compounded rate by the Assessing Officer vide Ext.P2 order. It is seen from Ext.P2 that petitioner had no primary crusher and the compounding granted was only for four secondary crushing machines. According to the petitioner on 2nd July, 2007 petitioner installed a primary crusher and therefore, sought modification of compounding facility. The officer has vide Ext.P7 dated 10.7.2007 granted compounding for the primary crusher also, but demanded tax for the whole year. According to the petitioner, demand of tax at compounded rate for the primary crusher should be limited to three quarters as the machine was installed only on 2.7.2007. It is seen from Ext.P7 that the officer has demanded tax at compounded rate on the primary crusher assuming that it was available for the whole year. If petitioner has installed the machine only on 2.7.2007, then demand of tax at compounded rate should be limited to three quarters of the year. The Assessing Officer has not considered the evidence produced by the petitioner to substantiate the date of installation of the

primary crusher. In the circumstances, I direct the Assessing Officer to consider evidence produced by the petitioner including details of additional power allocation, payments made for electricity charges and determine actual date of installation of primary crusher and modify Ext.P7 after verifying the documents produced and after hearing the petitioner. The first respondent is directed to issue fresh orders in the place of Ext.P7 within a period of two months from now. The petitioner will remit tax along with quarterly returns for the primary crusher except for the first quarter which will be demanded only if petitioner is found to have installed the machine in the first quarter itself.

W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms